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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.2401 of 1999

New Delhi, this 08th day of March 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI M.P.SINGH, MEMBER(A)

B.S. Thakur
Inspecting Officer (Labour)
Labour Department
15 Rajpur Road
New Delhi

... Applicant

(By Advocate: Shri Jog Singh, through
proxy counsel Ms Harvinder Oberoi)

versus

1. Government of NCT
through Chief Secretary
Government of Delhi
5 Sham Nath Marg, Delhi
2. Labour Commissioner
15 Rajpur Road
Delhi-110056
3. Principal Secretary (Services)
Government of Delhi
5 Sham Nath Marg, Delhi ... Respondents

(By Advocate: Shri Rajinder Pandita)

ORDER(Oral)

By Shri M.P.Singh

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 challenging order dated 20.10.1998.

2. The brief facts of the case are that the applicant was appointed as Grade-II (Ministerial) in DASS (Delhi Administration Subordinate Services) Cadre on 5.1.1980. Subsequently he was selected for the post of Inspecting Officer in the pay scale of Rs.1640-2900 and accordingly he joined the Labour Department on this temporary



post vide order dated 7.9.1989. When the applicant came to know that he has no chance of getting confirmed in the said post, he made a request on 19.7.1995 for repatriation to the DASS Cadre particularly in view of the fact that his lien was maintained by the respondents in DASS Cadre. Further request to that effect was made on 8.8.1996 and 2.5.1997. The respondents vide their letter dated 11.8.1997 rejected the request of the applicant on the ground that under no circumstances, the applicant's lien can be extended beyond three years, which rejection, according to the applicant, is illegal as per F.R. 14-A(a) which reads as under:

"Except as provided in Rule 13 and Clause (d) of this rule, a Government servant's lien on a post may in no circumstances be terminated, if the result will be to leave him without a lien upon regular post."

Similarly, F.R. 14-A[↓] provides that:

"A Government servant's lien on a post shall stand terminated on his acquiring a lien on another post (whether under the Central Government or State Government) outside the Cadre on which he is borne."

3. Since the request of the applicant for repatriation is rejected by the respondents, he has filed this OA seeking direction to the respondents to quash the impugned orders dated 20.10.1998 and 11.8.1997 and also direction to repatriate him to DASS Cadre.



4. The respondents have contested the case and have stated that the applicant, prior to joining as Inspecting Officer on selection, was working as Grade-II in DASS Cadre and his lien in the said post has never been terminated. The order dated 20.10.1998 passed by the respondents was in the light of the judgement of the Hon'ble Apex Court in which it is held that once a maximum period prescribed in the order has expired, an employee cannot be continued on probation after the expiry of that period. He must be treated as automatically confirmed even in the absence of an express order of confirmation. It means that the applicant was on probation for two years with effect from 11.9.1989 and since the maximum period of probation had expired and the applicant is deemed confirmed on the present post, his lien in DASS Cadre stands automatically terminated. The respondents have further stated that the applicant had been appointed in a temporary post on regular basis. In due course of time he will be declared confirmed to the post. In view of these reasons, the applicant is not entitled to any relief and the instant application is liable to be dismissed.

5. Heard both the learned counsel for the rival contesting parties and perused the records.

6. During the course of arguments the learned counsel for the respondents drew our attention to the judgement of the Hon'ble Apex Court in which



it is held that once a maximum period prescribed in the order has expired, an employee cannot be continued on probation after the expiry of that period and he must be treated as automatically confirmed.


7. On a perusal of the record placed before us we find that aforesaid judgement of the Hon'ble Apex Court is not applicable in this case. It is an admitted position that the applicant was confirmed against a post in DASS Cadre. His lien has not been terminated as no formal order has been issued to this effect. Moreover, a government servant's lien on a post shall stand terminated only on his acquiring a lien on another post. In the present case, the applicant has not acquired a lien on another post i.e. the post of Inspecting Officer. F.R. 14-A(a) provides that a Government servant's lien on a post may in no circumstances be terminated, if the result will be to leave him without a lien upon regular post. In this case, unless the applicant is confirmed in the post of Inspecting Officer in the Labour Department, his lien in the DASS Cadre cannot be terminated. In view of this, the impugned orders dated 20.10.1998 and 11.8.1997 passed by the respondents are not in accordance with rules and instructions and the same are liable to be quashed and set aside.

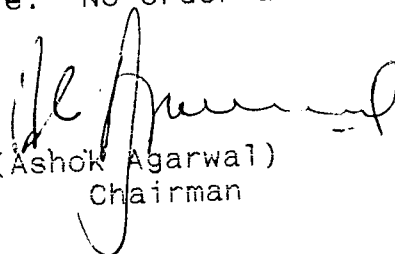


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8. For the reasons stated above, the impugned orders dated 20.10.1998 and 11.8.1997 are quashed and set aside. Respondents are directed to repatriate the applicant to any post in his parent cadre i.e. DASS Cadre, within a period of six months from the date of receipt of a copy of this order.

9. The OA is disposed of as above. No order as to costs.


(M. P. Singh)
Member(A)


(Ashok Agarwal)
Chairman

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